

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

Proceeding Under Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9606(a) and 9622(a)

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1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300, and CERCLA.

1.4 The Respondents, without admission of any issue of fact or law herein, consent to and will not contest EPA's authority or jurisdiction to issue or to enforce this Consent Order.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter described), by conducting sampling; containing and preventing the migration of hazardous substances from the Site; and by properly disposing of the hazardous substances located there.

III. FINDINGS OF FACT

3.1 Hercules, Incorporated, is a corporation organized and existing under the laws of the State of Delaware.

3.2 Yokohama Tire Corporation is a corporation organized and existing under the laws of the State of Delaware. Yokohama Tire Corporation is a corporate successor of Mohawk Rubber Company. In 1989, Yokohama Corporation of North America, the corporate parent of Yokohama Tire Corporation, purchased the stock of Mohawk Rubber Company. In 1992, Mohawk Rubber Company was reorganized and its name was changed to Yokohama Tire Company.

3.3 From 1891 to 1973 a tannery, named the Old Salem Tannery, conducted a business of preparing leathers at property in the 700 block of West Main Street, Salem, Roanoke County, Virginia. From 1891 to 1972, the owner/operator of the Old Salem Tannery was Leas and McVitty, Inc. In 1972, the property and the Leas and McVitty business was purchased by Herbert Weinstein and Robert Anderson, a partnership ("the Weinstein and Anderson partnership"). In 1973, the 16-acre property, including the Old Salem Tannery, was purchased by Mr. Sterling Minter from the Weinstein and Anderson partnership. Sterling Minter used the property to conduct salvage operations. The salvage operations included the attempt to reclaim lead from the breakdown and splitting of batteries. From the mid-seventies to October 1991, a portion of the property was leased by Mr. Minter to Mohawk Rubber Company as an equipment storage facility.

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3.4 From approximately 1982 to 1989 Hercules sold scrap metal which included used batteries to Sterling Minter and Beaver Hauling, a company owned by Sterling Minter. The scrap metal and batteries were transported by Beaver Hauling to the Old Salem Tannery Site. Included in this material were used batteries from a Hercules plant on Edgemont Drive, in Convington Virginia. At the Site, Robert Beaver, an employee of Sterling Minter, cracked the batteries for the attempted salvage and reclamation of lead.

3.5 Mohawk leased space at the Old Salem Tannery Site for storage of its equipment in the late 1970s to the late 1980s. During that time, as a result of arrangements made between Mohawk and Sterling Minter, industrial type used batteries were shipped from Mohawk to the Old Salem Tannery Site. Mohawk instructed Sterling Minter to dispose of these batteries. Sterling Minter's, employee, Robert Beaver, cracked these batteries at the Site to attempt to reclaim their lead content.

3.6 From 1973 to early 1991, Sterling Minter directed and supervised the salvaging and reclamation of lead from batteries at the Site. During this time period, these reclamation activities at the Site were conducted by Sterling Minter's employee, Robert Beaver, who was acting under Minter's direction.

3.7 The Old Salem Tannery Site, located in Salem, Roanoke County, Virginia, consists of 16 acres of land, bisected into northern and southern portions by tracks of the Norfolk and Southern Railroad. In the northern portion there are two warehouses and a machine shop. Access to the northern portion is restricted by fencing. Access to the southern portion is unrestricted. (Figure 1, attached hereto and incorporated into this Order, is a schematic of the Site.) The southern portion is accessible to trespassers and the general public. The Site is adjacent to the Roanoke River to the south and a tributary to the Roanoke River to the east. The property is situated in a mixed residential and commercial area, just outside the City limits of the City of Salem. The Site includes two buildings, as well as several in- and above-ground vats. Several unlined lagoons, in which tannery wastes were dumped, also exist on-site. To the east, there is a creek adjacent to the Site. The creek is a tributary to the Roanoke River. Area residents are at risk of exposure through ingestion, inhalation, and dermal contact of the hazardous substances that are present at the Site.

3.8 At present the Site is in limited use. A portion of one of the buildings is used by Sterling Minter for warehousing and the remainder is leased to a trucking company.

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3.9 In February 1990, the Virginia State Water Control Board ("SWCB") performed an analysis of standing water in the lagoon area. Preliminary determinations indicated the presence of the hazardous substances, arsenic and chromium. The SWCB referred the Site to the Virginia Department of Waste Management.

3.10 The Virginia Department of Waste Management performed a preliminary assessment at the Site on or about November 1, 1990. Soil sample analyses showed concentrations of arsenic at 34.5 parts per million (ppm), cadmium at 74.3 ppm, chromium at 7,880 ppm, and lead at 25,900 ppm. The Old Salem Tannery Site was brought to the attention of the U.S. EPA Region III Removal Branch by the Virginia Department of Waste Management.

3.11 On or about January 14, 1992, EPA's Technical Assistance Team conducted a site assessment to determine the extent of contamination on- and off-site. Sample results showed lead concentrations at 4,140 ppm and chromium at 17,000 ppm in the soil on Site. In addition, sediment samples revealed that runoff containing cadmium and chromium had discharged into the creek adjacent to the Site that is a tributary of the Roanoke River.

3.12 Based on the information described above, on July 6, 1992 the EPA Regional Administrator determined that conditions at the Site posed a threat to public health, welfare and/or the environment due to the actual or threatened release of hazardous substances from the Site. Based on this determination, EPA approved the use of Superfund monies to respond to the threat.

3.13 On or about September 10, 1992 an EPA On-Scene Coordinator("OSC") performed sampling at the Site to investigate the nature and extent of contamination. The investigation was conducted for five days and consisted of soil sampling, drum sampling and sampling of sediment and surface water from the creek.

3.14 The OSC discovered approximately 150 drums and containers (plastic 15-20 gallon pails) stored in one of the buildings. The OSC observed that these containers were in poor condition and in some instances had spilled their contents.

3.15 Field sampling of the contents of the containers revealed characteristics of ignitability. The sampling also revealed acids in the containers which had the characteristic of corrosivity. Because of the field sampling results, the OSC determined that the containers present the threat of fire and explosion.

3.16 The September 10, 1992 investigation by the OSC described in paragraph 3.13 above revealed lead contamination in soil above 500 ppm in the northern portion of the Site. The OSC's investigation also found trivalent chromium in soils in the

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southern portion of the Site. Because the Site is not subject to frequent use by the public and the risk of exposure is low, the OSC determined, at that time, that the trivalent chromium did not warrant emergency response action. The OSC also determined that the levels of arsenic in the surface soils and sediments did not warrant emergency response action at that time.

3.17 Pursuant to an Agency for Toxic Substances and Disease Registry (ATSDR) Health Consultation memorandum (November 4, 1992), trivalent chromium, at levels found in the southern portion of the Site (17000 ppm), does not pose a public health hazard with regard to present (infrequent and intermittent) Site usage. ATSDR, however, has determined that the Site chromium contamination would likely pose a chronic health risk and would need to be re-evaluated in the event of increased Site usage.

3.18 On November 24, 1992, EPA issued a unilateral administrative order ("UAO") (EPA Docket No. III-93-05-DC) which among other things, ordered Sterling Minter to prepare a Response Action Plan ("RAP") for conduct of a removal action at the Site; identify the nature and extent of lead contamination at the Site; remove and dispose of lead contaminated soils; and remove the containers of hazardous substances located at the Site.

3.19 On or about December 7, 1992, Sterling Minter notified EPA of his intent to comply with the UAO described in paragraph 3.18 above. On or about September 9, 1993, however, Sterling Minter informed EPA that he would not complete the removal action ordered by EPA in the UAO.

3.20 On November 24, 1993, the EPA Regional Administrator approved further use of Superfund monies at the Site so that the EPA OSC would be authorized to conduct the removal activities that Sterling Minter had failed to complete. At that time, the EPA Regional Administrator again determined that conditions at the Site pose a threat to public health, welfare and/or the environment due to the actual or threatened release of hazardous substances from the Site.

3.21 Lead is a potential neurotoxin which causes retardation in the neurobehavioral development of children, and changes in blood enzyme levels at exposures so low that there is no specific threshold. Animal studies show that lead is a potential human carcinogen. Exposure may lead to brain damage, anemia, pica, convulsions, anorexia, weight loss, or chromosomal damage.

3.22 Wastes such as those found in the containers on-Site identified in 3.14 and 3.15 above are "hazardous wastes" having characteristics of ignitability, as defined in 40 C.F.R. § 261.21, and corrosivity, as defined in 40 C.F.R. § 261.22.

3.23 Lead is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because it is listed at 40 C.F.R. § 302.4.

IV. CONCLUSIONS OF LAW

4.1 The Old Salem Tannery Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4.2 Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.3 Lead is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because it is listed at 40 C.F.R. § 302.4. The wastes found in containers at the Site are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they possess the characteristics identified in 40 C.F.R. §§ 261.21 and 261.22.

4.4 "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Old Salem Tannery Site and are currently present there.

4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

4.6 Respondents are "persons who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such persons, by any other party or entity, at the Site owned or operated by another party or entity and containing such hazardous substances" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

4.7 Respondents are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information for the Administrative Record, EPA has determined that:

5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

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5.2 The Work is necessary to protect the public health and welfare and the environment.

5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

VI. PARTIES BOUND

6.1 This Consent Order shall apply to and be binding upon EPA and its agents, and upon Respondents and their agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of Respondents, nor a change in ownership or control of the Site shall in any way alter Respondents' responsibilities under this Consent Order.

6.2 In the event that Respondents file for or are placed into bankruptcy, Respondents shall notify EPA within three days of such event.

6.3 Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondents to conduct any portion of the Work to be performed by Respondents pursuant to this Consent Order. Respondents shall require in any and all contracts related to this Site that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Consent Order.

6.4 The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms of this Consent Order and to execute and legally bind such Respondent to this Consent Order.

6.5 Respondents are jointly and severally liable for compliance with the provisions of this Order. All references to "Respondents" herein shall mean each and every Respondent, both collectively and individually. The failure by one of the Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by the other Respondent. Further, the compliance by one Respondent with all or part of this Order shall not in any way excuse or justify noncompliance by the other Respondent.

VII. NOTICE TO THE STATE

Notice of issuance of this Consent Order has been given to the Commonwealth of Virginia, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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**VIII. RESPONSE ACTION PLAN DEVELOPMENT
AND IMPLEMENTATION**

8.1 Respondents shall commence and complete performance of the following response action within the time periods specified herein.

8.2 Within fifteen (15) business days of the effective date of this Consent Order, Respondents shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondents shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondents who will conduct all or any portion of the response action no less than five (5) business days prior to commencement of the response action to be performed by such persons. Respondents shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform the response actions shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondents' selection of all contractors, subcontractors, supervisory personnel, and other persons who will perform the response action; the Respondents' Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondents shall notify EPA within five (5) calendar days of receipt of such EPA disapproval of the Respondents' selection of person(s) who will replace the one(s) disapproved by EPA. If a person's selection for specified work is disapproved by EPA, they shall not perform such specified response action.

8.3 Respondents shall accomplish the following items:

- a. Identify the extent of lead contamination at the Site existing above 1,000 ppm, by conducting sampling of soils and groundwater;
- b. Identify and segregate the soil contaminated with lead as described in paragraph 8.3 (a), above, at the Site;
- c. Remove and dispose of lead existing above 1,000 ppm as described in paragraph 8.3 (b), above, from the Site in accordance with applicable law; or in the alternative, subject to EPA's discretion and acceptance and subject to the terms of this Order, treat the lead contamination identified in Section 8.3 (b) above at levels above 1,000 ppm in soils so as to reduce the

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lead concentration in the soils to 1,000 ppm ;

- d. Dispose of all lead contamination residues on vessels or equipment used in the lead removal described in Section 8.3 in accordance with applicable law;
- e. Conduct post-removal verification sampling to ensure that the requirements of paragraph 8.3(a-d) have been complied with.
- f. Remove and properly dispose of, or treat contaminated water (e.g., equipment and sampling-related decontamination fluids) generated as a result of the activities set forth in the above items to levels in accordance with applicable law;
- g. Provide site specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP"), for Site activities required by subparagraphs (a) through (e), above, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite migration of hazardous substances during the conduct of activities at the Site and protection of public health from exposure to hazardous substances during the conduct of activities at the Site pursuant to this Order. Applicable sections of the HASP shall be at least as stringent as the Occupational Safety and Health Administration and EPA requirements, including, but not limited to, 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides, (July 5, 1988).
- h. Obtain a Hazardous Waste Generator Identification Number, if applicable;
- i. Provide an expeditious schedule for implementation of the RAP.

8.4 Within thirty (30) business days of the effective date of this Consent Order, Respondents shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. The RAP shall include, among other things, a schedule for expeditious performance of such response actions. To the extent that information concerning the details of a particular item does not yet exist so it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA,

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which supplement(s) shall fully detail such items. Hereinafter, all references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.

8.5 EPA will review the RAP and notify the Respondents of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondents shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within five (5) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. Approval, disapproval and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below.

8.6 Within five (5) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP, ("written approval to proceed"), the Respondents shall begin implementation of such RAP in accordance with the RAP and the schedule therein, and shall further complete implementation of such RAP in accordance with the RAP and schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondents to correct or re-perform such response action pursuant to this Consent Order, Respondents shall correct or re-perform the response action or portion of the response action in accordance with a schedule provided by EPA.

8.7 Beginning thirty (30) calendar days subsequent to the date of receipt of EPA approval of the RAP and every thirty (30) calendar days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondents that the response action is complete, the Respondents shall provide EPA with a progress report for each preceding thirty (30) day period or if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall include, at a minimum: 1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Consent Order, including measures to prevent pollution as described in paragraph 8.3(d) above; 2) a description of all data anticipated and activities scheduled for the next thirty (30) calendar days or if applicable, the period specified in writing by the EPA Project Coordinator; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for when such actions will be completed; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the response

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action, RAP and schedule made in accordance with Section XIV to this Consent Order during the reporting period. In addition, Respondent shall provide to EPA, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2b, "Extending the tracking of Analytical Services to Potentially Responsible Party Lead Superfund Sites", (July 6, 1992).

8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Consent Order shall be sent by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX.

8.9 All reports, plans, approval letters, specifications, schedules and attachments required by this Consent Order are subject to EPA approval and shall be deemed incorporated into this Consent Order upon approval by EPA. In the event that EPA approves a portion of the RAP, report or other item required to be submitted under this Order, the approved portion shall be enforceable under this Order. In the event of conflict between this Consent Order and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Consent Order shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing and/or (2) submit its own modifications to Respondents. Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within five (5) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. In the event that EPA submits its own modifications to Respondents, the Respondents are hereby required to implement such modifications within five (5) business days of receipt of such modifications, or such longer time as may be specified by EPA in its discretion. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Consent Order. Determination(s) of non-compliance will be made by EPA.

8.10 In addition to the reports required by this Order, Respondents shall provide to EPA, upon written request, any and all information and documents in any of their possession, custody or control related to the Site including, but not limited to, Site analytical data (including raw data), Site safety data, Site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility), the identity of treatment, storage and/or disposal facilities used, the identity

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of transporters used, the identity of any contractors, subcontractors and supervisory personnel used, information and documents concerning Respondents' compliance with Quality Assurance and Quality Control requirements of this Consent Order, information and documents relating to Respondents' efforts to secure access, and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

8.11 Within twenty (20) calendar days of the date Respondents conclude they have completed implementation of the RAP Respondents shall submit a written Final Report to EPA subject to EPA approval described in 8.9 above. The Final Report shall detail the response action undertaken to implement the RAP including a description of measures undertaken to prevent pollution in accordance with paragraph 8.3(d) of this Order, and shall be certified by Respondents in accordance with the terms of paragraphs 22.1(b) and 22.2 below. EPA will review the adequacy of Respondents' implementation of the RAP and accomplishment of the response action specified in paragraph 8.3 above. EPA will notify Respondents, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the actions required to correct such discrepancies or deficiencies. Within five (5) business days, or as otherwise specified by EPA in its discretion, Respondents shall, as specified by EPA, amend the Final Report or develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies and perform such corrective actions in a manner consistent with the NCP and all applicable Federal laws and regulations, as required by the NCP. Any additional plan or amendment to the RAP will be subject to the approval procedures in paragraphs 8.5 and 8.9 above.

8.12 Respondents shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Consent Order and all applicable Federal, State and local laws and regulations, as required by the NCP. Any hazardous substances, pollutants or contaminants transferred for disposal off-site as a result of this Order must be taken to a facility acceptable under EPA's Off-Site Policy (58 Fed Reg. 49200 (September 22, 1993)) in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3).

8.13 Respondents shall not commence any Work except in conformance with the terms of this Consent Order. Respondents shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed. No Respondent shall interfere in any way with the performance of Work in accordance with this Order by any other Respondent(s), nor may any Respondent impede or prevent any other Respondent(s) from

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reasonable access to any area of the Site to comply with the requirements of this Order.

8.14 Respondents shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] and any other party as required by law in the event of any action or occurrence during the pendency of this Consent Order which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at, or from the Site, or which may create a danger to public health, welfare or the environment.

8.15 In the event that EPA believes that response actions or other current activities at the Site by Respondents are causing or may cause a release or potential release of hazardous substances or are a threat to public health or welfare or to the environment, EPA may at its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential release or threat.

IX. DESIGNATED PROJECT COORDINATORS

9.1 Respondents shall designate a Project Coordinator and shall notify EPA of their designated Project Coordinator no later than five (5) calendar days after the effective date of this Consent Order. Designation of a Project Coordinator shall not relieve Respondents of their obligations to comply with all requirements of this Order. The Respondents' Project Coordinator shall be a technical and/or managerial representative of the Respondents and may be a contractor and/or consultant; provided, however, the Respondents' Project Coordinator should not be their legal representative in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondents shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondents and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Consent Order, including plans, reports, approvals, and other correspondence, shall be directed to the Project Coordinators.

9.2 The Project Coordinator for EPA is:

Robert Guarni
On-Scene Coordinator
U.S. Environmental Protection Agency
Removal Enforcement Section (3HW33)
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-6686

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9.3 Respondents shall have the right to change their Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.

9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondents. EPA's intent is to notify Respondents as soon as practicable following any such change of its Project Coordinator.

9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.

9.6 The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by Respondents at the Site to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE

The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80 and "QA/QC Guidance for Removal Activities", April 1990, EPA/540/G-90/004, while conducting all sample collection and analysis activities required by this Consent Order. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondents shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. ACCESS

11.1 As of the effective date of this Consent Order, Respondents shall provide to each other, EPA and its employees, agents, consultants, contractors, and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondents wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors, and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Consent Order.

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11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than any of the Respondents, the Respondents shall use their best efforts to obtain Site access agreements from the present owners. Best efforts shall include, but not be limited to, agreement to reasonable conditions for access. Such access agreements shall be finalized within (7) calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for Respondents and their employees, agents, consultants, contractors and other authorized and designated representatives to conduct the Work, and for EPA and its designated representatives to conduct the activities outlined in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondents shall notify EPA, in writing, within five (5) calendar days of receiving EPA's written approval to proceed, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondents shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP. Within seven (7) calendar days after receiving EPA's written approval to proceed the Respondents shall obtain written agreement from the Site owner that the property will be restricted to "industrial uses". The written agreement shall provide for appropriate deed restrictions to be placed on the property in order to limit it to industrial use. The Respondents shall ensure that the applicable deed restrictions are placed on the property and that the restrictions on the use of the property are filed and properly recorded under applicable Virginia law. The Respondents shall report compliance with the foregoing requirements to restrict the property to "industrial" use to the EPA pursuant to the provisions of Paragraph 8.11 of this Consent Order. It is understood that the provisions in this Paragraph 11.2 regarding deed restrictions pertain to the immediate threats at the Site which are the subject of this Consent Order. The EPA reserves all of its rights as set forth in Section XV "Reservation of Rights" to take any additional response action under the NCP at any time that EPA deems such action is appropriate.

11.3 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purpose of, inter alia: inspecting Work, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to

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EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the Site.

11.4 Respondents may make a claim of business confidentiality for information submitted pursuant to this Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to Respondents.

11.5 The Respondents may withhold those records and documents covered by any privilege or protection under federal law applied by federal courts in actions commenced by the United States. In the event that the Respondents withhold a document as privileged, the Respondents shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s), and addressee(s)/recipient(s), a description of the nature of the document, and identification of the privilege asserted at the time such document is withheld.

11.6 No such claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Order, including, but not limited to sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site, such as weekly reports, the final report, and information for the administrative record. Nor shall such claims be made for analytical data, Site safety data, Site monitoring data, operational logs, hazardous waste manifests, identities of treatment, storage and/or disposal facilities used, identities of transporters used, identities of any contractors or subcontractors used which information is required to be submitted pursuant to this Order.

11.7 Notwithstanding any provision of this Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. DISPUTE RESOLUTION

12.1 Except as provided elsewhere in this Consent Order, if the Respondents object to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to

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this Consent Order, including billings for oversight costs, the Respondents shall notify EPA in writing of their objection(s) within fourteen (14) calendar days of receipt of such notification or action.

12.2 EPA and the Respondents shall have fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision to the Respondents. Respondents' obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section XII.

12.3 In order to prevail in any dispute regarding oversight costs, Respondents must demonstrate that the costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.

12.4 Following resolution of the dispute, as provided by this Section XII, Respondents shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision. To the extent that Respondents do not prevail upon resolution of any dispute involving contested costs, Respondents shall remit to EPA within fourteen (14) calendar days of receipt of such resolution, all outstanding oversight costs determined to be owed to EPA, including any accrued interest, as specified in paragraph 13.1 below.

12.5 Notwithstanding any other provision of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

13.1 For each day, or portion thereof, that Respondents fail to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondents shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substance Superfund" and checks shall be transmitted to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

Payment shall be made by cashier's or certified check within thirty (30) calendar days of receipt of demand. Interest at the rate of the current annualized treasury bill rate shall begin to

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accrue on the unpaid balance at the end of the thirty day period in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator. A copy of the transmittal letter and check shall be sent simultaneously to: EPA Region III Hearing Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107.

13.2 Stipulated penalties shall accrue as follows: for one to seven calendar days, or portion thereof, of non-compliance, \$1,000 per violation per day; for eight to fourteen calendar days, or portion thereof, of non-compliance, \$2,500 per violation per day; for each day of non-compliance, or portion thereof, thereafter, \$5,000 per violation per day. Neither the accrual of, nor demand for stipulated penalties set forth in this Section shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondents' failure to comply with the requirements of this Consent Order.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

14.1 The Respondents, through their Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than two (2) calendar days after Respondents or any one of them becomes aware or should have become of any such delay or anticipated delay and in writing no later than seven (7) calendar days after Respondents or any one of them becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXI of this Consent Order and shall describe fully the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent, and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall ensure that their Project Coordinator provides Respondents with immediate notification of any project delays. The Respondents shall adopt all reasonable measures to avoid and minimize such delay.

14.2 To the extent Respondents intend to claim that any delay or anticipated delay described by Respondents in accordance with paragraph 14.1 was or will be caused by circumstances beyond the control of any one of them, Respondents shall, within fourteen (14) calendar days after Respondents become aware or should have become aware of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondents fully demonstrate that the delay was caused by circumstances beyond each of their control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the

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Respondents took all reasonable measures to avoid and minimize delay. The Respondents shall have the burden of proving these factors to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of Respondents pursuant to paragraph 22.1(b) of this Consent Order.

14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondents or any one of them and (2) that cannot be overcome by due diligence on Respondents' part, shall not be deemed to be a violation of Respondents' obligation(s) under this Consent Order, and shall not subject Respondents to stipulated penalties under this Consent Order for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of Respondents. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other items or components. Each such item must be separately addressed and delay substantiated according to the provisions of paragraphs 14.1 and 14.2 above.

14.4 Failure of the Respondents to comply with the notice requirements of paragraphs 14.1 and 14.2 above shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.

14.5 In the event that EPA and Respondents cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the control of the Respondents that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Consent Order.

XV. RESERVATION OF RIGHTS

15.1 Except as expressly provided in this Consent Order, (1) all parties reserve all rights, claims, interests and defenses they may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief and/or the imposition of statutory penalties.

15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of Work performed by Respondents; to halt Work being performed by Respondents if Respondents have not complied with an approved RAP or this Consent Order, or at any time EPA deems necessary to protect public health, welfare or the

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environment and to perform such Work; and to request and require hereunder that Respondents correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require that Respondents perform response actions in addition to those required by this Consent Order. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondents, and Respondents decline, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Consent Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred, and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.

15.3 EPA reserves the right to bring an action against Respondents for recovery of all recoverable costs incurred by the United States related to this Consent Order which are not reimbursed by Respondents, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.

15.4 This Consent Order concerns certain response actions (described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Consent Order. EPA reserves all rights including, without limitation, the right to institute legal action against Respondents and/or any other parties in connection with the performance of any response actions not addressed by this Consent Order.

15.5 Nothing in this Consent Order shall limit the authority of the EPA On-Scene Coordinator as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

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16.2 This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

16.3 By consenting to the issuance of this Consent Order, the Respondents waive any claim to reimbursement they may have under Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612.

XVII. OTHER LAWS

All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State, and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

18.1 The effective date of this Consent Order shall be the date on which it is signed by EPA.

18.2 This Consent Order may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.

18.3 Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondents to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA.

18.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondents or the requirements of this Consent Order will be construed as relieving the Respondents of their obligation to obtain formal approval when required by this Consent Order, and to comply with the requirements of this Consent Order unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, or of their employees, agents, servants, receivers, successors, or assigns, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondents in carrying out the Work.

XX. INDEMNIFICATION AND HOLD HARMLESS

Respondents agree to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees and representatives from any and all causes of action caused by any acts or omissions of Respondents or their contractors in carrying out the response action.

XXI. REIMBURSEMENT OF COSTS

21.1 EPA shall submit to Respondents periodic and/or a final accounting of oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs, including indirect costs, incurred by EPA, its employees, agents, contractors, consultants and other authorized and/or designated representatives in connection with EPA's oversight of the Work. Upon request, Respondents may have the right to examine EPA's supporting cost documentation which EPA has in its possession, excluding documents which are privileged, confidential business information or trade secret under Federal law. Such request shall be in writing and must be received by EPA within fourteen (14) days from the date the Respondent receives the accounting identified above. This request for supporting documentation shall not, in and of itself, delay the thirty (30) day remittance deadline set forth in subparagraph 21.2, below.

21.2 Respondents shall, within thirty (30) calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the "Hazardous Substance Superfund", unless the Respondent(s) invoke the dispute resolution procedures under Section XII herein. The notification of objection required under Section XII shall specifically identify the contested oversight costs (contested costs) and the basis for objection. Respondent(s) may contest the EPA oversight costs solely on the grounds that the costs were calculated incorrectly or were incurred in a manner inconsistent with the NCP. Respondent(s)

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shall remit all oversight costs which are not the subject of a Section XII dispute within the time and in the manner set forth above. The collection of any specifically identified contested costs which are the subject of a dispute resolution proceeding under Section XII, hereof, shall be stayed during the pendency of such proceeding except that interest at a rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), shall begin to accrue on the unpaid balance from the day after the expiration of the thirty-day period notwithstanding any dispute or an objection to any portion of the costs. To the extent that the Respondent(s) does not prevail upon resolution of any Section XII dispute involving contested costs, Respondent(s) shall remit to EPA within fourteen (14) calendar days of receipt of such resolution all outstanding oversight costs determined to be owed to EPA, including any accrued interest, in the manner set forth above. Checks shall specifically reference the Site and shall be transmitted as specified in Section XIII of this Consent Order.

XXII. CERTIFICATION OF COMPLIANCE

22.1 (a) Unless otherwise required by the terms of this Order, any notice, report, certification, data presentation, or other document submitted by Respondents under or pursuant to this Consent Order, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondents' compliance or non-compliance with any requirement(s) of this Consent Order shall be certified by each Respondent, a responsible official of each Respondent or by the Project Coordinator for the Respondents. The term "responsible official" means: (i) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.

(b) The written Final report required by paragraph 8.11 of this Consent Order, any written notification described in paragraph 12.1 of this Consent Order, and any "Notice of Force Majeure", described in paragraph 14.2 of this Consent Order, shall be certified by each Respondent or a responsible official of each Respondent.

22.2 The certification required by paragraph 22.1 of this Consent Order shall be in the following form:

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I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete.

I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations."

Signature: _____

Name (print): _____

Title: _____

22.3 Submission of documents pursuant to this Consent Order which are found by EPA to contain false information shall constitute a failure to comply with this Consent Order and shall subject Respondents to stipulated penalties whether or not a responsible official of Respondents has certified the document.

XXIII. RECORD RETENTION

23.1 Respondents shall preserve all documents and information relating to the Work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six (6) years following completion of the response action required by this Order. In addition, Respondents shall also retain, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites", (July 6, 1992). At the end of this six year period and thirty (30) days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA.

XXIV. DEFINITIONS

26.1 "Business days" as used in this Order shall mean every day of the week except Saturdays, Sundays and federal holidays.

26.2 "Calendar days" as used in this Order shall mean every day of the week, including Saturdays, Sundays and federal holidays.

26.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.

26.4 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

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XXVII. NOTICE OF COMPLETION

When EPA determines, after EPA's review and approval of the Final Report required pursuant to paragraph 8.11 of this Order, that the response action specified in Section VIII of this Order has been fully performed and upon receipt of costs and penalties assessed by EPA, with the exception of any continuing obligations required by this Order, including those requirements specified in Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless") and XXIII ("Record Retention"), EPA will provide a notice of completion to the Respondents.

XXVIII. COVENANT NOT TO SUE

Except as otherwise expressly provided in this Consent Order, from the effective date of this Consent Order and as long as Respondents comply with the terms of this Consent Order, amendments, and subsequent modifications, and except for any proceeding to enforce its terms or collect any applicable penalties, EPA agrees not to sue or take any administrative actions against the Respondents, their successors and assigns for the Response Action conducted by Respondents pursuant to Section VIII of this Order. Nothing herein shall be interpreted to limit the rights reserved by EPA under Section XV "Reservation of Rights" of this Consent Order.

XIX. CONTRIBUTION PROTECTION

With regard to claims of contribution against the Respondents for matters addressed in this Consent Order, the EPA and the Respondents hereto agree that the Respondents are entitled, as of the effective date of this Consent Order, to such protection from contribution actions or claims as provided in Section 113 (f)(2), 42 U.S.C. § 9613 (f)(2). Respondents expressly reserve any and all rights of contribution that they have against potentially responsible persons who are not signatories to this Consent Order for the costs the Respondents incur and will incur by entering into and complying with this Consent Order.

FOR THE EPA:

BY: W. Laskowski
for Stanley L. Laskowski
Acting Regional Administrator
U. S. Environmental Protection
Agency

DATE: 2-3-94

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Hercules, Inc.

BY: J. D. Beach 11/5/94
Name: James D. Beach
Title: Vice President, Operations Support

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Old Salem Tannery Site

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Docket No. III-94-008-DC

Yokohama Tire Corporation

BY: *Matthew J. Anderson*
Name: Matthew J. Anderson
Title: Assistant Secretary

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